

**FIFTH AGREEMENT
BETWEEN THE CITY OF SUNNYVALE
AND LOCKHEED MARTIN CORPORATION
CLARIFYING RIGHTS AND RESPONSIBILITIES
RESULTING FROM SALE OF LOT 3
OF TRACT NO. 9800, MOFFETT PARK SUBDIVISION**

This Fifth Agreement Between the City of Sunnyvale and Lockheed Martin Corporation Clarifying Rights and Responsibilities Resulting from the Sale of Lot 3 of Tract No. 9800, Moffett Park Subdivision (the "Fifth Clarifying Agreement") dated as of _____, 2006 is by and between Lockheed Martin Corporation, a Maryland Corporation successor by merger to Lockheed Missiles & Space Company, Inc. ("Lockheed") and the City of Sunnyvale, California ("City").

RECITALS

This Fifth Clarifying Agreement is entered upon the basis of the following facts, understandings and intentions of Lockheed and City.

A. In January 1995 Lockheed owned certain real property located in the City of Sunnyvale, County of Santa Clara, California, commonly referred to as "Plant 1".

B. Lockheed and City entered into that certain Development Agreement, dated January 10, 1995, with City, recorded February 3, 1995 as Book N750, Page 575 in the Official Records of Santa Clara County, California (the "Official Records") (the "Development Agreement").

C. Lockheed accepted that certain Site Master Use Permit issued by City and approved by the City Council on December 20, 1994, and recorded August 16, 1995 as Book N962, Page 693 of Official Records, as amended by that certain Use Permit dated September 15, 1998 and recorded on January 20, 1999 as Document No. 14606985, Official Records (collectively, the "Site Master Use Permit").

D. The Site Master Use Permit and Development Agreement (1) run with the land, (2) govern the development of Plant 1, and (3) are effective until February 9, 2010.

E. Plant 1 contains numerous parcels which Lockheed has sold, or desires to sell to third parties, including Parcels 1, 2 and 3 (which were formerly part of Parcel 18), as more particularly designated and delineated on that certain Parcel Map of "Lockheed Martin Parcel 18 Subdivision" recorded July 9, 1999 in Book 717 of Maps, pages 42-47, Santa Clara County Records; Parcel 7 (sometimes referred to individually as the "Bayshore Parcel"), Parcels 4A and 8 (sometimes collectively referred to herein as "Parcel 8"); Lot 1 (formerly part of Parcel One and sometimes referred to herein as "Lot 1"), as more particularly designated and delineated on that certain map entitled "Tract No. 9800, Moffett Park Subdivision" recorded _____, 2006 in Book ____ of Maps, pages ____-____, Official Records (the "Tract No. 9800 Final Map");

and Lot 3 (formerly part of Parcel One and sometimes referred to herein as “Lot 3”), as more particularly designated and delineated on the Tract No. 9800 Final Map; which are hereinafter referred to collectively, as “Transfer Parcels”.

F. The portions of Plant 1, which are not described in Recital E above, which are not intended to be, or have not been, sold are hereinafter referred to as “Retained Property”.

G. The Site Master Use Permit “allows development of up to 750,000 square feet of additional development, or the total of 4,350 p.m. peak hour vehicle trips, whichever is greater and landscaping, circulation system, parking and other improvements over the next 15 years (to the year 2010)”, subject to certain conditions as set forth in the Site Master Use Permit.

H. On April 27, 2004 the City of Sunnyvale adopted the Moffett Park Specific Plan and on May 18, 2004 adopted an ordinance creating the Moffett Park Specific Plan zoning district (“MPSP Zoning District”) and an ordinance to rezone property within the Moffett Park Specific Plan area to be included in the MPSP Zoning District. The Moffett Park Specific Plan and the MPSP Zoning District establish development regulations and standards and include requirements for land use, intensity, design, traffic mitigation, housing mitigation, parking, landscaping, art in private development and other typical zoning standards.

I. Pursuant to the Development Agreement, the Moffett Park Specific Plan and the MPSP Zoning District do not apply to property subject to the Development Agreement during the Term of the Development Agreement.

J. City and Lockheed previously entered into that certain Agreement Between the City of Sunnyvale and Lockheed Martin Corporation Clarifying Rights and Responsibilities Resulting From the Subdivision of Parcel 18, dated October 14, 1998 (the “First Clarifying Agreement”); that certain Second Agreement Between the City of Sunnyvale and Lockheed Martin Corporation Clarifying Rights and Responsibilities Resulting from the Sale of the Bayshore Parcel dated as of October 29, 1999 (the “Second Clarifying Agreement”); that certain Third Agreement Between the City of Sunnyvale and Lockheed Martin Corporation Clarifying Rights and Responsibilities Resulting from the Sale of the Parcel 8 dated as of January 16, 2001 (the “Third Clarifying Agreement”); and that certain Fourth Agreement Between the City of Sunnyvale and Lockheed Martin Corporation Clarifying Rights and Responsibilities Resulting from the Sale of Lot 1 of Tract No. 9800, Moffett Park Subdivision dated as of _____, 2006 (the “Fourth Clarifying Agreement”). These agreements established: (1) that certain provisions of the Site Master Use Permit and Development Agreement had been satisfied; (2) that certain provisions of the Site Master Use Permit and Development Agreement were the obligations of the transferees; and (3) the square footage of development that was allocated from the Site Master Use Permit to each of the Transfer Parcels.

K. Pursuant to the First Clarifying Agreement, the Second Clarifying Agreement, Third Clarifying Agreement, and the Fourth Clarifying Agreement, Lockheed and the City agreed to allocate development rights from the Site Master Use Permit among seven separate parcels and lots (Parcels 1, 2, 3, 7, 4A and 8 and Lot 1), and agreed that any development approved by the City in addition to those allocations would not reduce the available development

of the Retained Property as described in the First Clarifying Agreement, the Second Clarifying Agreement, Third Clarifying Agreement, and Fourth Clarifying Agreement.

L. It is in the interest of both parties to clarify: (1) the conditions of the Site and Master Use Permit and Development Agreement as they relate to the development potential for Transfer Parcels; (2) the development potential on the Retained Property of Lockheed; and (3) clarify obligations relative to the Site Master Use Permit and Development Agreement.

M. This agreement does not supersede the previous First Clarifying Agreement, the Second Clarifying Agreement, Third Clarifying Agreement, and Fourth Clarifying Agreement.

N. Lockheed and the City now desire to enter into this Fifth Clarifying Agreement to clarify the rights and responsibilities pertaining to Lot 3.

Now, Therefore, the Parties agree as follows:

1. Definitions. The capitalized terms not otherwise defined herein shall have the meanings given in the Development Agreement and the Site Master Use Permit.

2. Allocation of Site Master Use Permit Conditions and Development Agreement Obligations. The Site Master Use Permit conditions and Development Agreement obligations described below shall be allocated as specified below:

(a) The landscaping obligations set forth in Paragraph 11 of the Site Master Use Permit and Section 5.3 of the Development Agreement shall be the obligation of the party who owns the parcel on which the landscaping is to be located, except that Lockheed acknowledges that the requirement for landscaping along Mathilda Avenue triggered when 200,000 square feet of new development is constructed on the Property (including any Transfer Parcels) continues to be a binding obligation upon Lockheed in addition to any transferee of any Transfer Parcel. Lockheed shall be responsible for assuring that any transferee performs such obligation. The Transfer Parcels shall be subject to the landscape requirements set forth in the Sunnyvale Municipal Code as applicable to all development, however, the landscaping provided along Mathilda Avenue shall be counted toward the landscaping obligation imposed under the Municipal Code.

(b) The Lockheed Employee Transportation Service Shuttle referred to in Paragraph 49 of the Site Master Use Permit shall not apply to a transferee of the Transfer Parcels, however, the Development Agreement does not exempt such transferee from any similar plan, program or requirement generally applicable to other property owners in the City.

(c) The Transfer Parcels shall be subject to the art in private development requirements, parking requirements, design guidelines, and height and setback requirements as described in the Sunnyvale Municipal Code to the extent generally applicable to other property owners in the City who do not have Development Agreements.

(d) By this Fifth Clarifying Agreement, one additional Transfer Parcel, Lot 3, is allocated development potential from the Site Master Use Permit as follows:

<u>Lot No. (APN)</u>	<u>Total Area</u>	<u>Allocated Square Footage</u>
3 (to be assigned)	28.698 ac	167,393 sq. ft.

The allocated square footage for Lot 3 is equal to the existing development on the property and therefore does not affect the net new square footage that is available to the Retained Property (as clarified in Paragraph 3 below).

3. Development Potential of the Retained Property. City and Lockheed have determined that notwithstanding the traffic formula provided in the Site Master Use Permit (as described in Recital G above), as of December 31, 2005 the net new square footage of development that is available for use on the Retained Property (which does not include Lots 1 and 3) is 353,000 square feet. The amount of 353,000 square feet was calculated by taking the square footage of improvements existing on Plant 1 as of December 31, 1994, then (a) adding the square footage of all pre-existing improvements which Lockheed has demolished since December 31, 1994, then (b) subtracting the square footage of all new improvements constructed by Lockheed on its Retained Property since December 31, 1994, then (c) (i) subtracting the net new square footage of development rights transferred to transferees of the Transfer Parcels allocated as set forth in the First Clarifying Agreement, the Second Clarifying Agreement and Third Clarifying Agreement and above and (ii) adding the square footage that existed on those Transfer Parcels that was not allocated to those Transfer Parcels. Any subsequent building or demolition permit issued for the Retained Property will be added or subtracted from the foregoing 353,000 square feet. Any development of Lot 3 approved by the City in addition to the allocation set forth in Paragraph 2 above shall not reduce the available development of the Retained Property as described in this Paragraph 3.

4. Severability of Development Agreement. The parties acknowledge that pursuant to Section 13.5 of the Development Agreement, upon the sale, transfer or assignment of the Developer's rights and interests under the Development Agreement (and any required approvals thereof by City) in connection with the sale or transfer of portions of the Property the Development Agreement shall become a separate severable agreement between the City on the one hand and each owner of the Property on the other hand on the terms and conditions of the Development Agreement as modified and clarified by the First Clarifying Agreement, Second Clarifying Agreement, Third Clarifying Agreement and herein. Upon such sale, transfer or assignment of Lot 3, the City and the transferee, by a joint agreement, may terminate the Site Master Use Permit and Development Agreement with respect to Lot 3.

5. Effect of This Agreement. The parties agree that the effect of this Fifth Clarifying Agreement is to clarify the Development Agreement and the obligations of any transferee of the Property under the Site Master Use Permit and Development Agreement; provided, however, this Fifth Clarifying Agreement is independent of the Development Agreement and the Site Master Use Permit and shall survive any termination or expiration thereof.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing agreement on the day and year first above written.

City:

City of Sunnyvale, California

By: _____

Name: _____

Title: _____

Approved as to form:

David Kahn, City Attorney

Lockheed:

Lockheed Martin Corporation,
a Maryland corporation

By: LMC Properties, Inc.,
a Maryland corporation
Under Special Delegation of Authority
Dated June 6, 2005

By: _____

Name: _____

Its: _____